

Talking Points

I. The FCC has recommended that Congress eliminate the fairness doctrine because:

- (1) there has been an explosion in the number and types of information sources available to the public, including a big increase in the number of independent broadcast outlets;
- (2) overwhelming evidence submitted in the Commission's inquiry supports the conclusion that the fairness doctrine "chills" rather than furthers the discussion controversial issues of public importance; and
- (3) the fairness doctrine is inconsistent with the fundamental constitutional principle that the public's right to be informed will best be served by avoiding governmental influence over the rights of speakers.

II. As noted above, numerous instances reflected in the record, as well as my own experience as a broadcaster and plain common sense, support the view that having a government agency looking over your shoulder to review your "fairness" discourages the presentation of controversial views. Even if you are not concerned about the ultimate exercise of governmental authority, the record shows that it costs large amounts of money and time simply to defend against unwarranted charges. The Supreme Court has recognized this chilling effect in striking down a Florida statute that established a right of reply to certain newspaper opinions. Miami Herald Publishing Company v. Tornillo.

III. Finally, this agency is not competent to judge the adequacy of broadcasters' efforts to present all sides of an issue to ensure that the public is not left uninformed, and its ability to intrude in content offers the possibility of governmental abuse to stifle unpopular ideas. This is the antithesis of the First Amendment's purpose.

Landmark Events

1. 1959 Amendments to Section 315 of the Communications Act. Congress codified the fairness doctrine by recognizing in the Communications Act that broadcasters have an "obligation imposed upon them under this Act...to afford reasonable opportunity for the discussion of conflicting views on issues of public importance."
2. Red Lion Broadcasting Co. v. FCC (1969). The Supreme Court approved the constitutionality of the fairness doctrine, but noted that if the doctrine rendered coverage of controversial issues "wholly ineffective" that would "stifle the purposes of the doctrine," and would be a "serious matter."
3. CBS v. Democratic National Committee (1973). The Supreme Court noted that balancing First Amendment interests in the broadcast media is a task of great delicacy and difficulty and that the problems are rendered more difficult "because the broadcast industry is dynamic in terms of technological change; solutions adequate a decade ago are not necessarily so now, and those acceptable today may well be outmoded 10 years hence."
4. Miami Herald Publishing Co. v. Tornillo (1974). The Supreme Court rejected as unconstitutional a Florida state statute that provided for a right of reply to certain newspaper stories. The court expressly found that such a right of access would "encourage a newspaper editor to avoid controversy" and "dampens the vigor and limits the variety of public debate."
5. FCC v. League of Women Voters (1984). The Supreme Court stated, in footnote 12, "were it is to be shown by the Commission that the fairness doctrine 'has the effect of reducing rather than enhancing' speech, we would then be forced to reconsider the constitutional basis of our decision [in Red Lion]."